

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS JOSEPH GENOVESE,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

22-CV-0800 (JMF)

18-CR-0183-1 (JMF)

ORDER TO ANSWER, 28 U.S.C. § 2255

JESSE M. FURMAN, United States District Judge:

The Court, having concluded that the motion brought under 28 U.S.C. § 2255 should not be summarily dismissed as being without merit, hereby ORDERS that:

The Clerk of Court shall electronically notify the Criminal Division of the U.S. Attorney's Office for the Southern District of New York that this Order has been issued.

No later than **April 7, 2022**, the U.S. Attorney's Office shall file an answer or other pleadings in response to the motion. In any response, the U.S. Attorney's Office should address, among other things:

- whether the motion is timely, *compare, e.g., German v. United States*, 209 F. Supp. 2d 288, 292 (S.D.N.Y. 2002) (holding that where a defendant appealed his conviction but later voluntarily withdrew his appeal, his conviction was final for AEDPA purposes ten days after entry of judgment), *with Grant v. United States*, No. 18-CV-01166, 2020 WL 7640938, at *5-6 (W.D.N.Y. Dec. 23, 2020) (holding that the movant's conviction became final after the Court of Appeals dismissed the appeal "notwithstanding the fact that [Movant] voluntarily stipulated to the appeal's dismissal"); and
- whether the motion is barred by any waiver of the right to bring a collateral challenge to Movant's sentence.

Movant shall file any response by **May 9, 2022**. Absent further order, the motion will be considered fully submitted as of that date.

All further papers filed or submitted for filing must include the criminal docket number and will be docketed in the criminal case only.

The Clerk of Court is directed to mail a copy of this Order to Movant.

SO ORDERED.

Dated: February 3, 2022
New York, New York



JESSE M. FURMAN
United States District Judge